IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10283 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? :

VIVEKANAND VIKAS MANDAL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 10283 of 2001

MS SEJAL K MANDAVIA for Petitioner No. 1

MR PR ABICHANDANI for Respondent No. 1-3

CORAM : MR.JUSTICE B.J.SHETHNA

Date of decision: 23/07/2002

ORAL JUDGEMENT

#. The petitioner-Trust has challenged in this petition the impugned orders dated 6.10.2001 (Annexure-A) passed by the respondent No.1 and the impugned order dated 10.10.2001 (Annexure-B) passed by respondent No.3 on the

ground that both the impugned orders were passed in flagrant violation of principles of natural justice and without extending reasonable opportunity of being heard, impugned orders were passed.

#. In ground (f) it was contended that as per Section 33(1) of the Gujarat Secondary Education Act, before passing any order of taking over the administration of the school, show cause notice was required to be issued to the trust. But, no such notice was issued, therefore, the impugned orders are bad.

#. On the strength of the aforesaid averments made in the petition on oath, learned single Judge of this court (Coram : R.M.Doshit, J.) issued rule and granted ad-interim relief in terms of para 7(B).

#. In response to the notice of rule issued by this court, reply affidavit has been filed by the respondent No.3. In para 8 of reply affidavit, it has been stated that the petitioner was given number of notices and called upon to explain regarding its mismanagement, but the Trust had not bothered to submit any reply to them. In the affidavit reply, it was submitted that petition should be dismissed without going in to merits of the case because the petitioner has not come before this court with clean hands.

#. Ms.Mandavia, learned counsel for the petitioner submitted that all the notices along with reply affidavit are on different point and that too they are issued by District Education Officer and not by State Government, therefore, it cannot be said that the petitioner was given reasonable opportunity of hearing by the State Government, as provided under Section 33(1) of the Gujarat Secondary Education Act, 1972. The contents of those notices are annexed with affidavit reply, which shows that the petitioner was called upon time and again to show cause as to why action should not be taken against it. It is a different matter that in what context notice was issued but the intention of the notice was very much clear. In ground (f) it was never contended that the notice was required to be issued by the State Government. However, Ms.Mandavia tried to submit that State Government should have issued notice under Section 33 of the Act and not the District Education Officer. This submission has no substance. District Education Officer is part of the State Government and if due notices are given and in spite of that if the petitioner trust failed to reply to the show cause notices. then it cannot be said that the impugned

orders were passed in voilation of principles of natural justice.

#. From the above, it is clear that the petitioner has not come with clean hands by submitting that before passing the impugned orders no notices were given. This fact itself is sufficient to dismiss the petition. The law on this point is very clear that those persons who do not come before the court with clean hands are not entitled for any relief much less discretionary relief from this court under Article 226 of the Constitution of India.

#. Before parting, I must state that half heartedly an argument was tried to be submitted by Ms.Mandavia that there is a reference to the affidavit i.e. letter dated 16.7.2001 as well as letter dated 17.7.2001, which have never been supplied to the petitioner before passing the impugned orders, therefore, the impugned orders were bad. Nothing turns out much on this. The said letters are in the form of proposals. Whether they were supplied or not would make hardly any difference. The fact is clear that the petitioner trust has committed several irregularities. In that view of the matter, no other order could have been passed except the impugned orders at Annexure-A and Annexure-B passed by the respondent authorities.

#. In view of the above discussion, this petition fails and is dismissed. Rule discharged. Ad-interim relief stands vacated forthwith.

#. At this stage, a request is made by Ms.Mandavia for the petitioner to continue the ad-interim relief for a period of four weeks on the ground that interim relief is in operation since long in favour of petitioner. In ordinary circumstances, this request would have been granted, but as the petitioner has not come before this court with clean hands, therefore, the petitioner is not entitled for extension of interim relief even for a day. Hence, this request is rejected.

(B.J.Shethna, J.)

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